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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of ANNETT and
NICHOLAS G. DEMMA.

2d Civil No. B183139
(Super. Ct. No. SD 023497)
(Ventura County)

ANNETT A. DEMMA,

Respondent,

v.

NICHOLAS G. DEMMA,

Appellant.

Nicholas G. Demma appeals from a post-judgment order directing him to sign documents necessary to complete the sale of community real property owned by him and his former wife, Annett.¹ A prior judgment ordered the sale of the real property. Nicholas contends that the trial court erred because, after entry of the judgment, Annett agreed to sell her interest in the property to him. We conclude that no valid contract exists and affirm the post-judgment order.

¹ We refer to the parties by their first names not from disrespect, but to ease the reader's task.

Factual and Procedural Background

On September 18, 2001, the trial court entered judgment dissolving the parties' marriage as to status. On June 7, 2002, it entered judgment on reserved issues. That judgment decreed that the community property includes two undeveloped parcels in Los Angeles County (hereafter the property). The judgment ordered the parties "forthwith to place the . . . property for sale." On March 22, 2004, the trial court entered a second judgment on reserved issues. That judgment ordered that the property be listed for sale with a real estate broker.²

The real estate broker received an all-cash offer of \$775,000 for the property. Nicholas refused to accept the offer. Annett filed a motion to authorize the court clerk to sign an acceptance of the offer on his behalf.

In opposition, Nicholas alleged that Annett was contractually bound to sell her interest in the property to him. He relied on correspondence between himself and Annett's counsel. In a June 29, 2004 letter, Annett's counsel stated that she would sell her interest in the property to Nicholas for \$275,000, "total sum to be paid via cashier's check and the guarantee that [Annett] is not responsible for any realtor's fees, back taxes, escrow charges or anything else in regard thereto." Counsel wrote that the property "would be deeded directly" to Nicholas "as an Interspousal Transfer Deed." Nicholas made a counteroffer which Annett rejected.

In an August 19, 2004 letter, counsel reiterated Annett's original offer. In a letter to counsel dated September 29, 2004, Nicholas stated: "[Annett's] offer is hereby accepted and I am hereby tendering my cashier's check in the amount of \$275,000.00 made payable to [Annett]. I am relying on the representation that there are no recorded encumbrances on the property. You are authorized to send the check to Annett when I

² Neither appellant's original appendix nor augmented appendix includes the three judgments. We obtained copies of the judgments from the superior court file. Pursuant to Evidence Code section 452, subdivisions (c) and (d), and section 459, we take judicial notice of the three judgments.

have the Deed." In a letter to Nicholas dated September 30, 2004, counsel characterized Nicholas's letter of the day before as a counteroffer because of his statement that he was "relying on the representation that there are no recorded encumbrances on the property." Counsel stated that Annett never made that representation. He also wrote that she rejected the counteroffer and withdrew her original offer.

The trial court ruled that this exchange of letters did not constitute a valid contract "since . . . some very significant details, such as encumbrance of record, had not been resolved." The court ordered Nicholas to sign documents necessary for the sale of the property. If Nicholas refused to sign the documents, the court authorized its clerk to sign them on Nicholas's behalf.

Standard of Review

Where it is alleged that a series of written communications results in a contract and the trial court interprets the writings without the aid of extrinsic evidence, "the interpretation of the series of communications between the parties is a matter of law and an appellate court is not bound by the trial court's determination. [Citations.]" (*Richards v. Flower* (1961) 193 Cal.App.2d 233, 235.) Thus we independently determine whether the exchange of letters between the parties constitutes a valid contract.

No Contract Was Formed

"[B]asic principles of the law of contract . . . are (1) a valid acceptance must be absolute and unqualified (Civ.Code, § 1585), and (2) qualified acceptance constitutes a rejection terminating the offer; it is a new proposal or counteroffer which must be accepted by the former offeror now turned offeree before a binding contract results. [Citations.]" (*Landberg v. Landberg* (1972) 24 Cal.App.3d 742, 750.)

Nicholas's acceptance of Annett's offer was not absolute and unqualified. A condition of Annett's offer was that Nicholas "guarantee" that she would not be "responsible for any realtor's fees, back taxes, escrow charges or anything else in regard thereto." Nicholas's acceptance made no mention of such a guarantee.

Furthermore, Nicholas's acceptance included a new condition not contained in the offer: Annett's alleged "representation that there are no recorded encumbrances on the property." Annett did not make this representation. By demanding that Nicholas guarantee that she would not be responsible for any back taxes, Annett put Nicholas on notice that the property may be subject to a recorded lien for back property taxes.³ Pursuant to Civil Code section 1114, "[t]he term 'incumbrances' includes taxes, assessments, and all liens upon real property."

Thus instead of guaranteeing that Annett would not be responsible for any back taxes, Nicholas in effect required Annett to guarantee that there is no recorded lien for back taxes. Consequently, Nicholas's acceptance was actually a counteroffer. Because Annett rejected the counteroffer, no valid contract was formed. (*Landberg v. Landberg*, *supra*, 24 Cal.App.3d at p. 750.)

Disposition

The trial court's post-judgment order is affirmed. Respondent shall recover her costs on appeal.

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GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

³ In his opposition to Annett's motion, Nicholas declared that "about \$15,000 in back property taxes" are owed on the property.

Bruce Young, Commissioner^{*}
Superior Court County of Ventura

Nicholas G. Demma, in pro per, for Appellant.

C. B. Henricksen, for Respondent.

^{*}(Pursuant to Cal. Const., art. VI, § 21.)